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In the

Supreme Court of the United States

October Term 1960

No. 431

FORD MOTOR COMPANY,
Complainant and Appellant

against

CHESTER R. PACE, ET AL.,
Defendants and Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

PETITION FOR REHEARING

WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD E. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: December 9, 1960

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

PETITION FOR REHEARING

For its petition for rehearing, appellant respectfully shows to this Honorable Court:

Statement

Appellant brought suit in a state Chancery Court for an injunction prohibiting the Tennessee Motor Vehicle Commission from proceeding with a hearing on a dealer's complaint against appellant pursuant to the Tennessee Motor Vehicles Sales Licenses Act, § 59-1701 to § 59-1720 T. C. A., and for judgment declaring the statute invalid as violative of both the Federal and State Constitutions.

The Chancellor held the statute invalid under the State Constitution. The Supreme Court of Tennessee reversed and upheld the statute under both Federal and State Constitutions.

Appeal was taken to this Court. Respondents moved to dismiss on the ground that the appeal did not present a substantial Federal question.

On November 21, 1960, this Court dismissed the appeal as follows:

> "The motion to dismiss is granted and the appeal is dismissed for want of a properly preserved federal question."

Your petitioner is uncertain whether this Court intended to indicate that the presentation of the Federal questions before the State Court was not sufficiently demonstrated in the Jurisdictional Statement, or that the Federal questions were not ripe for adjudication here.

Accordingly, the first portion of this petition will demonstrate that the Federal questions, as set forth in the Notice of Appeal and Jurisdictional Statement (such Federal questions being shown in Exhibit 1 to this Petition), were properly presented to and passed upon by the State Court. The second portion, beginning on p. 8, will show that these questions are ripe for adjudication here.

It is therefore respectfully submitted that this petition for rehearing should be granted and that probable jurisdiction should be noted.

Reconsideration is important for the further reason that this Court's order apparently has been interpreted by a dealer association and a trade publication as indicating that the statute is valid on the merits. These interpretations accordingly have predicted enactment of similar legislation

in other states on the assumption that no substantial Federal question is involved.*

PRESENTATION OF FEDERAL QUESTIONS

I

Under The Due Process Clause

The Supreme Court of Tennessee recognized that Federal questions under the Due Process Clause had been presented:

> "The basic argument is that the Act is an invalid exercise of the police power of the State, * * * and consequently it is inimical to the due process clauses

*Thus, the December 5, 1960 issue of Automotive News stated (under the heading "State Laws Reaffirmed"):

> "By refusing to upset the stringent Tennessee law, the Supreme Court has swept away a cloud of uncertainty which had left the 18 state regulations largely unenforceable.
>
> * * *
>
> "Pending a U. S. Supreme Court determination on state factory-practices laws, dealer associations in many non-control states had declined to ask their legislatures for similar enactments. The Court's implied affirmation of the state regulations is expected to pave the way for a rash of proposals across the country at legislative sessions next year."

The November 28, 1960 issue of the same publication stated:

> "The United States Supreme Court has for the first time affirmed the right of the states to impose stringent controls on 'factory-dealer relations.'"

Another publication, Tennessee Automotive Association Bulletin #40-60, on November 28, 1960, stated:

> "The Supreme Court's ruling was handed down upon the basis that no substantial Federal question was presented in the appeal which would permit the Supreme Court to take jurisdiction.
>
> "TAA is advised by a major Detroit automotive publication that other states not having similar enactments, which have been awaiting a ruling in the Ford-Tennessee case, will now press forward with Tennessee type legislation."

The items from which the foregoing excerpts were taken are appended in full as Exhibit 2 on pages 18-23 of this petition.

of * * * the 14th Amendment to the Constitution of the United States. * * *" (Appendix A to Jurisdictional Statement, p. 2a)

A. Bias of Tribunal

Appellant's complaint in the Chancery Court alleged that the Act was void under the 14th Amendment because it violated procedural due process of law.

> "* * * by vesting quasi judicial powers in a commission inherently biased by the mandatory qualifications for appointment, thereby permitting automobile dealers to sit in judgment upon * * * the action of a manufacturer * * * in * * * disputes between dealers and manufacturers." (Appendix G to Jurisdictional Statement, p. 51a)

This issue was specifically passed upon by the Supreme Court of Tennessee as follows:

> "A rather vicious attack is made upon the Section of the Act (59-1703) which makes the Commission consist solely of dealers who are selected by the Governor from a list submitted by the Tennessee Automotive Association. The argument is * * * that by the very nature of a Board thus made up, the Board is biased and partial. It is said such a non-judicial body which exercises at least quasi-judicial functions should not be allowed. We think the attack on this Section of the Act is entirely unjustified. * * *" (Appendix A to Jurisdictional Statement, p. 12a)

B. Vagueness and Indefiniteness

The impact of the biased character of the tribunal is aggravated by the vague and indefinite criteria for license revocation. Appellant's complaint in the Chancery Court therefore alleged that the Act denied procedural due process

under the 14th Amendment by authorizing revocation of appellant's license:

> "* * * upon grounds which are stated with such generality, and without statutory definition so as to apprise complainant and others of the conduct sought to be condemned thereby, and of the acts prohibited by said statute and made criminal violations by its terms." (Appendix G to Jurisdictional Statement, p. 50a; quotation from subparagraph 6; see also subparagraph 7, pp. 50a-51a).

The Supreme Court of Tennessee dealt specifically with this Federal question as follows:

> "It is argued very forcibly that the Act is so vague in its terms that it violates procedural due process. * * *
>
> * * *
>
> "* * * the briefs argue that the Act does not provide or furnish any ascertainable standards upon which the Commission would act, and criticize the terms 'the act of coercing', 'threatening to cancel any franchise', 'as unfairly', 'without due regard to the equities of said dealer', and 'without just provocation', and such statements as are in Section 59-1714. We have carefully, as we have said before, read and re-read some two or three times the specific provisions of this Act and it seems to us that the application of these terms objected to can be fairly administered by the Commission in applying the ordinary meaning of such terms to them. * * *" (Appendix A to Jurisdictional Statement, p. 11a)

II

Under The Commerce Clause

The Supreme Court of Tennessee expressly recognized that appellant had presented a Federal question under the Commerce Clause. After sustaining each provision for rev-

ocation of license as a valid exercise of the police power of the State under the due process clauses of the State and Federal Constitutions, and under state constitutional provisions prohibiting class legislation and monopolies, the Court said:

> "The same reasoning, above, applies to the attack on the Act in that it constitutes a burden on interstate commerce. * * *" (Appendix A to Jurisdictional Statement, p. 8a).

Furthermore, the Federal question under the Commerce Clause was raised in appellant's complaint in the Chancery Court. In paragraph IV* of its complaint appellant alleged:

> "* * * that under the provisions of said Act manufacturers such as complainant desiring to sell and ship *motor vehicles* * * * *in interstate commerce* in the State of Tennessee must first be licensed by said Commission composed of such dealers. * * *
>
> "Complainant further avers that Section *59-1714* of said law purports to authorize said Commission to *revoke* or suspend a license previously granted, including that which the complainant avers has heretofore been granted to it as a manufacturer and distributor of *such* motor vehicles and other products in Tennessee. * * *" (Emphasis added) (Contained in record transmitted to this Court but not quoted in Jurisdictional Statement)

The Supreme Court of Tennessee specifically sustained the Act as a whole under the Commerce Clause by holding that:

---

*In paragraph VII of the complaint in the Chancery Court appellant also alleged (Appendix G, p. 51a) that the provisions of § 59-1701 through § 59-1720, inclusive, of the Act are unconstitutional for the following reasons among others:

"8. The provisions of said Act purport to require complainant * * * to obtain state licenses before conducting its interstate business in the State of Tennessee and thereby imposes unlawful burdens and restrictions on interstate commerce and are *repugnant to Article I, Section 8 of the Constitution of the United States.*" (Emphasis added)

> "* * * The Act applies to all alike, whether they are out of the State or in the State, so long as they are doing business here, and, this being true, it is not a burden on interstate commerce." (Appendix A to Jurisdictional Statement, p. 8a-9a)

This ruling explicitly upheld the entire Act under the Commerce Clause. The breadth of the ruling is further confirmed by the fact that, in passing upon the issue of burden upon commerce, the Supreme Court of Tennessee necessarily had before it the impact of the statute upon commerce as pointed out by the Chancellor:

> "* * * Limiting the right of manufacturers to weed out inefficient dealers * * * could certainly harm the public. * * * The denial or revocation of the license of a manufacturer for whatever reason would have the result of completely shutting off the opportunity of the public to buy its motor vehicles in the State. * * *" (Appendix D to Jurisdictional Statement, p. 24a)

III

Under The Contract Clause

The Federal question presented under the Contract Clause was first raised by a petition for rehearing in the Supreme Court of Tennessee which was entertained and denied on the merits on May 4, 1960,* the Court stating:

> "The insistences * * * made are that the Act * * * is contrary * * * to Article I, Section 10 of the Constitution of the United States, in that as we have construed the Act it constitutes * * * a law which impairs the obligation of contracts, entered into and existing prior to the passage of the legislation. We are unable to perceive these infirmities." (Appendix B to Jurisdictional Statement, p. 18a)

*The notice of appeal (Appendix Q to Jurisdictional Statement) was filed within 90 days thereafter, on July 28, 1960. The appeal is therefore timely.

The Federal Questions Were Presented to and Passed Upon By The State Court

For these reasons, it is respectfully submitted that the Federal questions as to the invalidity of the statute under the Due Process Clause, the Commerce Clause and the Contract Clause were properly presented to and passed upon by the highest Court of the State of Tennessee, and that these questions are properly before this Court on appeal under 28 U. S. C. § 1257(2).

RIPENESS FOR ADJUDICATION HERE

Since the Federal questions were properly presented to and passed upon by the State Court, it appears that the dismissal of the appeal might have rested upon the ground that the factual context was not demonstrated to be sufficiently concrete under the principles laid down in *Rescue Army* v. *Municipal Court*, 331 U. S. 549 (1947).

It is submitted, however, that the *Rescue Army* case is inapposite since here the facts relevant to a decision on the validity of the statute under review plainly appear on the face of the statute or are clearly established by documentary evidence and uncontradicted testimony:

(a) the members of the Tennessee Motor Vehicle Commission were, as required by § 59-1703, T. C. A., drawn exclusively from a list submitted by the Tennessee Automotive Association, a private group primarily composed of Tennessee new automobile dealers (see Appendix L to Jurisdictional Statement, p. 58a).

(b) the Association stated in its minutes that it was:

"* * * charged with the duty of submitting the names of at least 20 *automobile dealers* * * * from

which the Governor will appoint the Tennessee Motor Vehicle Commission * * *." (Emphasis added) (Appendix M to Jurisdictional Statement, p. 60a).

(c) the Association did submit to the Governor lists composed exclusively of Tennessee motor vehicle dealers. (Appendix M to Jurisdictional Statement, p. 60a-71a).

(d) the Commission therefore consists exclusively of such dealers (see Appendix L to Jurisdictional Statement, p. 59a).

(e) the franchise of the dealer complaining to the Commission in this case was terminated by appellant for insufficient sales effort (see Appendix O to Jurisdictional Statement, p. 73a-79a) pursuant to the terms of his franchise agreement entered into before the effective date of the Act (Appendix P to Jurisdictional Statement, p. 81a).

(f) the Commission, composed of existing dealers, has served appellant with a notice (Appendix J to Jurisdictional Statement, p. 55a) of hearing to adjudicate the dispute between the complaining dealer and appellant under statutory standards which make it a cause of license revocation to terminate a dealer's franchise "unfairly without due regard to the equities of said dealer and without just provocation" (§ 59-1714(h)(4)).*

*This is in sharp contrast to the situation in which professional bodies in such fields as law and medicine *pass upon the conduct of members of their own profession*. The Tennessee Commission, composed entirely of dealers, regulates not merely other dealers but also manufacturers.

Neither bar associations nor medical societies can penalize a patient or client for unjustified discharge of his doctor or lawyer. The Commission, composed of dealers, however, is about to consider penalizing appellant for alleged unjustified termination of a dealer's franchise.

(g) the statute provides that "* * * if the Commission shall determine that any licensee is guilty of violation of this chapter, his or its license *shall be suspended or revoked.*" (Emphasis added) § 59-1715.

(h) revocation or suspension of appellant's license would disrupt the substantial volume of commerce flowing from appellant through its dealers to Tennessee consumers, which is interstate in nature. (See Appendix N to Jurisdictional Statement, p. 72a).

Where, as here, facts determinative of the validity of a state statute are clearly established by proof, this Court repeatedly has exercised jurisdiction to adjudicate the validity of the statute in a suit to enjoin or prohibit its enforcement.

In *Public Utilities Commission of California* v. *United States*, 355 U. S. 534 (1958), a California statute required common carriers to obtain prior approval from the state Public Utilities Commission when negotiating with the Federal Government for special rates for shipment of government property. The Commission was authorized to grant approval to the common carriers to such extent and subject to such conditions as it considered just and reasonable. When the Commission indicated an intention to enforce the Act, the United States brought a declaratory judgment action to have the Act declared an unconstitutional burden on the Federal Government. The action was brought without waiting to determine whether approval would be given to the common carriers by the Commission. This Court adjudicated the merits of the constitutional claim, stating (p. 540):

"* * * where the only question is whether it is constitutional to fasten the administrative procedure onto the litigant, the administrative agency may be

> defied and judicial relief sought as the only effective way of protecting the asserted constitutional right. * * *" 355 U. S. at 540.

The situation in this case is closely analogous. Appellant asserts that it is unconstitutional to require it to submit a dispute to a manifestly biased tribunal, specifically composed as authorized by the statute, and empowered to apply unconstitutionally vague and capricious standards. In these circumstances, appellant should not be required to submit its dispute with the complaining dealer to the Commission, where its right to do business in the State must be revoked or suspended if the Commission invokes the only remedy or penalty open to it under the statute. Compare *Ex Parte Young*, 209 U. S. 123, 165 (1908); *Thornhill* v. *Alabama*, 310 U. S. 88, 97 (1940).

In *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440 (1960), criminal proceedings were pending against a ship owner for violation of the Detroit Smoke Abatement Code. Before there had been an adjudication of guilt or innocence, the defendant brought suit in a state court to enjoin further prosecution of the criminal action on the ground that the Code was unconstitutional. On appeal under 28 U. S. C. § 1257 (2), this Court adjudicated the merits of the constitutional claim. As the opinion pointed out, "Structural alterations would be required in order to insure compliance with the Code" (362 U. S. at 441). This made clear the dimensions of the burden on commerce involved. It remained only for this court to determine whether the burden was undue.

Similarly, appellant here would be required to forego insistence upon effective sales representation by Tennessee dealers in order to insure compliance with the Tennessee statute. This appeal therefore stands in substantially the same posture as that in the *Huron Portland Cement* case.

It remains only for this Court to determine whether the burdens imposed by the statute, including compulsory submission of the dispute between appellant and the complaining dealer to a tribunal composed of dealers, constitute undue burdens upon commerce, denials of due process or impairment of obligations of contracts.

In *Chicago* v. *Atchison, T. & S. F. Ry.*, 357 U. S. 77 (1958), a local ordinance required that a certificate of public convenience and necessity be secured for any new interterminal taxicab service. Without applying for a certificate for the service desired, a suit was brought for declaratory judgment that the ordinance was inapplicable or invalid. This Court held that "Since * * * § 28-31.1 is completely invalid insofar as it applies to Transfer, that company was not obligated to apply for a certificate of convenience and necessity and submit to the administrative procedures incident thereto before bringing this action. * * *" 357 U. S. at 89.

Similarly, in the present case, appellant asserts that both the provisions establishing the Tennessee Motor Vehicle Commission, and the criteria under which it is to adjudicate disputes between appellant and its dealers, are completely invalid as applied to appellant. The facts dispositive of this claim are clearly established. Therefore, as in *Atchison*, the validity of the administrative procedures should be adjudicated before appellant is compelled to submit to them.

In contrast with the situation in this case, in *Rescue Army* v. *Municipal Court*, 331 U. S. 549 (1947), the constitutional issues came to this Court in "highly abstract form". In that case it was uncertain on precisely what charges the appellant was to be tried under the state statute. Indeed, the Court did not have before it "the benefit on this record of even the literal text of the charges." 331 U. S. at 575.

Here the charges against appellant are clear (Appendix F to Jurisdictional Statement, p. 45a), and the Tennessee statute, as interpreted by the State Court, is unequivocal in its imposition of the burdens which appellant contends are violative of the Due Process, Commerce and Contract Clauses.

The threat posed by the Tennessee statute to the vital interests of appellant in this case also is clear. The necessary effect of a violation of the statute by appellant in terminating the franchise of the complaining dealer is suspension or revocation of its license to do business in the State of Tennessee. Such a result, not only as to appellant but as to all of its dealers and the public in that State as well, would be disastrous and far-reaching. This consideration, in addition to the national public importance of the issues presented, as illustrated in Exhibit 2 to this petition warrants decision of this appeal on the merits.

It is respectfully submitted that appellant, its dealers and the public in Tennessee, should not be required to incur such great risks by subjecting appellant to a hearing before a biased tribunal, empowered to take such drastic action under statutory standards that do not meet the requirements of constitutional principles.

For these reasons, it is respectfully submitted that the Federal questions presented by this appeal are ripe for adjudication here.

CONCLUSION

Appellant respectfully submits that this petition for rehearing should be granted and that probable jurisdiction should be noted. Should the dismissal stand, however, the order of dismissal should be amended to state explicity that it is without prejudice to the consideration in the future of any constitutional questions arising upon further pro-

ceedings, as was done in *Rescue Army* v. *Municipal Court* (331 U. S. at 585). This would be appropriate to preclude any claim in a further proceeding that the dismissal is *res judicata* as to the Federal questions. The need for such an amendment is further indicated because the order of dismissal already has been widely misinterpreted. As shown by trade publications (appended as Exhibit 2 to this petition) automobile dealer groups have erroneously construed it as an affirmation of the constitutionality of the kind of legislation here involved.

Respectfully submitted,

William T. Gossett
WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

WILLIAM T. GOSSETT
L. HOMER SURBECK
WRIGHT TISDALE
RICHARD B. DARRAGH
RICHARD A. GIVENS
CECIL SIMS
Of Counsel

Dated: December 9, 1960

CERTIFICATE OF COUNSEL

I, William T. Gossett, a member of the Bar of this Court, certify that this petition for rehearing is presented in good faith and not for delay.

William T. Gossett
WILLIAM T. GOSSETT
Attorney for Ford Motor Company
Ford Motor Company
The American Road
Dearborn, Michigan

December 9, 1960

EXHIBIT 1.

Federal Questions Presented in Notice of Appeal and Jurisdictional Statement (p. 7-8)

I. Whether the provisions of the statute authorizing revocation of a manufacturer's license by the Motor Vehicle Commission are invalid, on their face or as applied to appellant, under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution since:

A. Bias and prejudice against the manufacturer, and pecuniary interest in issues before the Commission, are inherent in the Commission because

(1) the statute (§ 59-1703), as applied and as interpreted by the Supreme Court of Tennessee, requires that the Commission be composed exclusively of automobile dealers who are selected from a list supplied by a private association of automotive dealers; in spite of the fact that

(2) each of the grounds for revocation specified in § 59-1714(g) and (h) of the statute involves controversies between a manufacturer and a dealer as to which dealers cannot be considered impartial and in which members of the Commission, all of whom are automobile dealers and a majority of whom are franchised new car dealers, have a pecuniary interest.

B. The statutory language is so vague and uncertain that it is not reasonably possible to ascertain the limits of the conduct prescribed.

II. Whether the statute is repugnant to the Commerce Clause of the Federal Constitution, Art. I, § 8, cl. 3, since

it unduly interferes with the flow of interstate commerce without clear necessity to do so by:

A. Authorizing disruption of interstate commerce through mandatory revocation or suspension of a motor vehicle manufacturer's license to do business in the State of Tennessee if the Commission shall find that such manufacturer has violated the statute in its relations with a single dealer.

B. Imposing restraints upon the volume of interstate commerce for local economic advantage by:

(1) prohibiting a motor vehicle manufacturer from requiring a dealer to order or accept delivery of "any" new vehicle not "voluntarily" ordered, even though the dealer may have failed to exert sufficient sales effort to fulfill his agreement and to give the manufacturer adequate representation;

(2) requiring that a motor vehicle manufacturer deliver to Tennessee dealers all vehicles that are publicly advertised for immediate delivery, within 60 days after ordered, even though there is a shortage in interstate commerce as frequently occurs when new models are first introduced; and

(3) imposing undue restrictions upon termination of ineffective dealers and upon enfranchisement of replacement dealers and additional dealers.

III. Whether the statute, as applied to appellant, violates the Contract Clause of the Federal Constitution, Art. I, § 10, and the Due Process Clause of the Fourteenth Amendment by impairing, without clear necessity, the exercise of appellant's contractual rights to terminate ineffective dealers.

EXHIBIT 2

A. Automotive News, December 5, 1960, pages 3 and 8

State Laws Reaffirmed . . .

Curbs on Factories Given Shot in Arm

By Maynard M. Gordon
News Editor

STATE laws governing factory conduct towards franchised dealers have received a revitalizing shot from the United States Supreme Court.

By refusing to upset the stringent Tennessee law, the Supreme Court has swept away a cloud of uncertainty which had left the 18 state regulations largely unenforceable.

The Tennessee case, pressed hard by Ford with aid from Chrysler Corp. and General Motors, was the first to reach the highest U. S. court. The Tennessee Supreme Court had found the state's law constitutional, and the U. S. Supreme Court summarily dismissed Ford's appeal from the Tennessee ruling.

• • •

PENDING a U. S. Supreme Court determination on state factory-practices laws, dealer associations in many non-control states had declined to ask their legislatures for similar enactments. The Court's implied affirmation of the state regulations is expected to pave the way for a rash of proposals across the country at legislative sessions next year.

According to attorneys and state association managers, state laws would be more desirable from a dealer-protective level than the Federal good-faith law for three reasons:

1. The model Tennessee and Wisconsin laws, both of which have now been upheld by their supreme courts, are more assertive and restrictive than the Federal law.

2. There is more local control over factory-dealer practices. All-dealer licensing commissions adjudicate violations in five states—Arkansas, Louisiana, Nebraska, Oklahoma and Tennessee.

3. Factories have won most cases under the federal law so far, and a constitutionality test is still to come before a Circuit Court of Appeals, much less the U. S. Supreme Court.

• • •

WHY were the factories so concerned about the Tennessee law?

Early press reports on the U. S. Supreme Court's action mistakenly placed emphasis on that portion of the Tennessee law which makes it possible to deny a factory its operating license in the Volunteer State for any proof of violation.

Such a possibility is embodied in the law, just as the Tennessee Motor Vehicle Commission may withhold or revoke a dealer's license. But the issue of keeping Ford from selling cars to Tennessee dealers, never was raised, and, dealers believe, never will be.

What Ford and its friendly competitors were primarily agitating against in the Tennessee

case were clauses designed to protect franchised dealers from cancellations, terminations or nonrenewals "without due regard to the equities of said dealer" and "without just provocation."

These qualifications are "vague and uncertain" and leave clarification to a body composed entirely of dealers, Ford charged.

• • •

IN EFFECT, the factories were fighting for their right to contract as they pleased and to get rid of unsatisfactory or inefficient dealers as they pleased.

"It seems to us," Tennessee Supreme Court Justice Hamilton S. Burnett wrote, "that the application of these terms objected to can be fairly administered by the commission in applying the ordinary meaning of such terms to them."

However, in upholding the Tennessee law as constitutional, Justice Burnett did agree with Ford that the statute went too far in forbidding auto producers from "inducing" dealers to commit acts.

Factories can be stopped from "coercion" but not from "inducement," he explained, on the grounds that "inducement clearly means the art of selling" and thus raises a question of legal constitutionality.

Justice Burnett also ruled unconstitutional a section forbidding the factories from letting dealers choose new-vehicle transportation facilities.

• • •

IN FORD'S case, the Tennessee dealer whom it sought to sever was Cocke County Motor Co., Newport. Cocke County Motor's status now will have to be decided by the Motor Vehicle Commission, if Ford still wants to drop the franchise. Cocke County has continued to sell Ford products while the controlling law has undergone its court test.

Justice Burnett struck down Ford's attack on the all-dealer complexion of the commission by declaring that all Tennessee regulatory boards are made up of members of the profession which that board governs.

"The reason for this is perfectly obvious," he added.

The justice also denied a Ford allegation that the legislature had given the commission legislative power.

"It has long been settled in this state that under the police power the legislature may extend to these boards or commissions the right to administer regulatory laws," he noted.

In refuting factory arguments against the anti-coercion provisions of the act, Justice Burnett referred to a Tennessee Supreme Court decision made 60 years ago, which asserted:

". . . The Legislature, as it thought, found the employe at a disadvantage in this respect, and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the Act and entitles it to a place on the statute book as a valid police regulation."

JUSTICE BURNETT noted that this identical provision was approved by the majority of the Wisconsin Supreme Court when that state's factory-dealer licensing law was upheld in another Ford dealer case.

He observed that the Louisiana Supreme Court, in May, 1958, condoned the right of that state's legislature to enact a factory-practices law. He noted that a Colorado licensing law was overturned by a three-judge federal court in a GM case, but dismissed this opinion as lacking the "persuasive power" of the Louisiana and Wisconsin opinions.

Last May, a Milwaukee federal judge refused to try a termination case involving a DeSoto-Plymouth dealer but at the same time dissolved a state court injunction preventing

Chrysler Corp. from terminating the dealer's franchise. The federal judge ordered a state court trial under the Wisconsin licensing law.

The Tennessee and Wisconsin laws are two of the 13 in the U.S. providing for factory-and-dealer licensing, together with codes of fair practices. The other states in this category are Arkansas, Florida, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, Oklahoma, Rhode Island and Virginia.

Five other states impose less stringent curbs on factories. Minnesota and South Dakota merely bar "unfair" nonrenewals or cancellations, respectively, without going so far as the other 13 states in cracking down on threats to terminate or in regulatory provisions. They and Wyoming, however, join the 13 states in forbidding coercion or attempted coercion of dealers to accept unwanted goods.

New York simply outlaws "unfair" nonrenewals or terminations. Neither New York nor California, which merely bans misrepresentation in factory advertising, go along on the shipments-coercion ban.

B. Automotive News, November 28, 1960, pages 1 and 4

State Factory-Dealer Law Wins Supreme Court Nod

By Maynard M. Gordon
News Editor

THE United States Supreme Court has for the first time affirmed the right of the states to impose stringent controls on factory-dealer relations.

The Court did this last week by unanimously dismissing a factory appeal of a Tennessee decision under which Ford was prevented from cancelling a dealer's franchise.

Declaring that Ford's appeal lacked a "properly presented federal question," the high tribunal left the way open for a later test conditioned on new arguments about the constitutionality of state dealer-factory licensing laws.

But, the tone of the Court's stand in the case was such that a major victory appeared all but certain for new-car dealers who have engineered strict licensing safeguards into law in 18 states. And association managers were predicting last week that similar proposals might be advanced in non-control states next year.

* * *

AFTER a succession of courtroom successes under the federal good-faith law, auto industry attorneys were mildly dismayed by the dealer victory on a state statute. Both General Motors and Chrysler contributed briefs to the Ford side of the Tennessee case, making it a major test of dealer-factory licensing legislation.

Other participants in the cases included the Tennessee Automotive Assn., which helped the cancelled Ford dealer, Cocke County Motor Co., of Newport. The defense was joined by the Tennessee Independent Automobile Dealers Assn. and the Tennessee Auction Assn.

The Tennessee Dealer-Manufacturer Licensing Law went into effect in 1955. Like identical laws adopted at the same time in a number of Southern states, it established an all-dealer regulatory commission empowered to prevent any factory, dealer or salesman from obtaining or keeping an operating license for violations.

The factory restraint in the Tennessee code which triggered the test case rules out an "unfair" cancellation of a franchise or a non-renewal of a franchise "without due regard to the equities of the said dealer and without just provocation."

* * *

OWNERS of Cocke County Motor Co., E. R. Walker and E. R. Walker jr., appealed to the Tennessee Motor Vehicle Commission under this provision after their franchise was revoked by Ford.

At this stage, Ford obtained a court injunction preventing the Commission from deciding the status of the franchise pending a court determination of the legality of the licens-

ing law. In return, Cocke County Motor was granted an injunction keeping its Ford franchise operative while the case went through the courts.

Chancellor Ned Lentz, of Nashville Chancery Court, heard the arguments first. He declared the law unconstitutional and ordered the Commission out of business.

"Limiting the right of manufacturers to weed out inefficient dealers and those who fail to offer proper service to customers would certainly harm the public," Lentz stated.

Last March, the dealer and TAA won a reversal of the lower court and a ruling that the law was constitutional from the Tennessee Supreme Court. It was this decision—also unanimous—which the U. S. Supreme Court let stand last week.

"The purpose of this act," declared Justice Hamilton Burnett for the Tennessee Supreme Court, "is to eliminate harmful trade practices and dishonest dealings resulting in injury to the purchasing public. Such an act is constitutional."

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UNPROVOKED franchise terminations are one of nine practices denied to factories by the Tennessee law. The others are:

1. Coercing a dealer to take unordered vehicles or parts.

2. Coercing a dealer to order or accept vehicle options not included in the advertised list price of the vehicle.

3. Coercing a dealer to order parts, accessories or equipment from outside manufacturers.

4. Refusing to deliver vehicles to dealers within 60 days after receipt of the dealer's order.

5. Coercing a dealer to commit an "unfair" act by threatening franchise cancellation.

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SIX. Offering any items for sale to a dealer as part of negotiations for a new or renewed franchise.

7. Refusing to let the dealer choose the type of transportation in getting new vehicles.

8. Signing up a dealer who does not have adequate service facilities.

Dealers are barred from doing the following:

1. Requiring a vehicle purchaser to take unwanted options.

2. Selling a demonstrator as new and unused.

3. Selling a new vehicle without a warranty.

4. Operating without an "established place of business."

5. Using "false or misleading" advertising.

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A POINT raised by Ford in its opposition to the law was the all-dealer nature of the Motor Vehicle Commission. Tennessee's governor selects a new-car or used-car dealer of five years' experience from each of the state's nine Congressional districts.

In addition to being denied licenses under the law, factory or dealer violators may be fined $500 or imprisoned for six months.

Cocke County Motor Co. had asked the commission to rescind Ford's license to sell cars to Tennessee dealers, but this was not done and is not expected to be.

No punitive action against Ford is likely to be invoked until the Tennessee Supreme Court gets back official notice of the U. S. Supreme Court's dismissal of Ford's appeal.

Then the Motor Vehicle Commission finally will get a chance to try the Newport case on its merits, if Ford still wants to cancel Cocke County Motor Co.

C. Tennessee Automotive Association

November 28, 1960

BULLETIN #40-60

1—SUPREME COURT UPHOLDS TENNESSEE MVC LAW

The long court fight over the TAA-sponsored and supported Tennessee Dealer-Manufacturing Licensing Law, Chapter 79 of the Public Acts of 1955 as amended, ended last week in victory. The Supreme Court of the United States rejected the Ford Motor's appeal from the Tennessee Supreme Court decision upholding the Law provision objected to by the Ford Motor Company, provides that an automobile manufacturer licensed to do business in the State may be revoked on a finding that the manufacturer's cancellation of a dealer's franchise is, in the language of the Law, "without due regard to the equities of the said dealer and without just provocation."

The Supreme Court's ruling was handed down upon the basis that no substantial Federal question was presented in the appeal which would permit the Supreme Court to take jurisdiction.

TAA is advised by a major Detroit automotive publication that other states not having similar enactments, which have been awaiting a ruling in the Ford-Tennessee case, will now press forward with Tennessee type legislation.